REMARKS

Claims 10 and 14-24 are pending in this application. Claims 1-9 and 11-13 were previously cancelled without prejudice to or disclaimer of the underlying subject matter. Claims 10 and 14 are amended. Claims 20 and 22 have been cancelled without prejudice to or disclaimer of the underlying subject matter. Support for the foregoing amendment can be found throughout the specification and claims as originally filed, for example on page, 52, lines 10-13, page 100, line 19 through page 123, line 3. Upon entry of the foregoing amendment, claims 10, 14-19, 21, and 23-24 will be pending. No new matters enters by way of this amendment.

1. Withdrawn Rejections

Applicants acknowledge and thank the Examiner for indicating that the rejection under "35 USC 112-1st paragraph for Written Description has been withdrawn". Office Action at page 3.

Applicants also acknowledge and thank the Examiner for indicating that claims 15-19 are allowable. Office Action at page 3.

2. Rejection Under 35 U.S.C. §102

Claims 10, 14, and 20-24 have been rejected under 35 U.S.C. § 102(a) as allegedly anticipated by SEQ ID NO: 3 of U.S. Patent 6,410,826. Office Action at page 2. In particular, the Examiner alleges that "SEQ ID NO: 3 contains 21 consecutive nucleic acids corresponding to nucleic acids 95-115 of instant SEQ ID NO: 1, thus meeting the limitations of claims 10, 14, and 20-24, which are drawn to fragment encoded by a nucleic acid molecule comprising a nucleic acid sequence having from

about 15 to about 250 nucleic acid residues of SEQ ID NO: 1." *Id.*, at pages 2-3. Applicants respectfully disagree with this rejection.

In order to sustain a 35 U.S.C. § 102 rejection, the Examiner must establish that the subject matter of the instant claims was described in a printed publication in this or a foreign country, before the invention thereof by applicant. Applicants submit that the cited reference does not qualify as prior art. The present application is a continuation of U.S. Patent Application Serial No. 09/229,413, filed January 12, 1999, which in turn claims the benefit under 35 U.S.C. § 119 to provisional U.S. Patent Application Serial No. 60/071,479, filed on January 13, 1998. Therefore, the present application is, at a minimum, entitled to the filing date of January 13, 1998. *See, e.g.*, Specification at page 1, lines 1-3. The Examiner asserts that the effective filing date of the reference is 25 June 1998. As such, claims 10, 14, and 20-24 are not anticipated by US 6,410,826 as cited by the Examiner. Although Applicants disagree, to facilitate prosecution, claims 10 and 14 have been amended to recite that the nucleic acid molecule comprises "the nucleic acid sequence of SEQ ID NO: 1 or the complete complement thereof." Accordingly, the rejection of claims 10, 14, and 20-24 under 35 U.S.C. § 102(a) is moot. Applicants respectfully request the 35 U.S.C. § 102(a) rejection be withdrawn.

Claims 10, 14, and 20-24 have also been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by GenBank Accession Nos. D30807 and AA728430. Office Action at page 3. In particular, the Examiner alleges that "D30807 contains 267 consecutive nucleic acids corresponding to nucleic acids 54-320 of instant SEQ ID NO: 1, thus meeting the limitations of claims 10, 14, and 20-24, which are drawn to fragments encoded by a nucleic acid molecule comprising a nucleic acid sequence having from about 15 to about 250 nucleic acid residues of SEQ ID NO: 1." *Id.* The Examiner further alleges that "AA728430 contains 256 consecutive nucleic acids corresponding to nucleic acids 65-320 of instant SEQ ID NO: 1, thus meeting the limitations of claims 10, 14, and

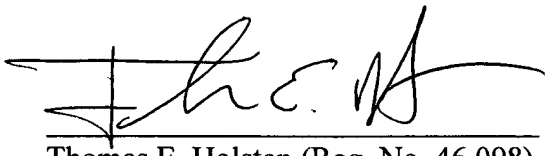
20-24, which are drawn to fragments encoded by a nucleic acid molecule comprising a nucleic acid sequence comprising having from about 15 to about 250 nucleic acid residues of SEQ ID NO: 1." *Id.* Applicants respectfully traverse these rejections.

"It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention." *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986). Further, "an anticipation rejection requires a showing that each limitation of a claim must be found in a single reference, practice, or device." *In re Donohue*, 766 F.2d 531, 226 U.S.P.Q. 619 (Fed. Cir. 1985). Although Applicants disagree, to facilitate prosecution, claims 10 and 14 have been amended to recite that the nucleic acid molecule comprises "the nucleic acid sequence of SEQ ID NO: 1 or the complete complement thereof." Whatever the cited references teach, they do not disclose SEQ ID NO: 1 or complete complement thereof. Accordingly, the rejections of claims 10, 14, and 20-24 under 35 U.S.C. § 102(b) are moot. Applicants respectfully request the 35 U.S.C. § 102(b) rejections be withdrawn.

Conclusion

In view of the foregoing remarks, Applicants respectfully submit that the present application is now in condition for allowance, and notice of such is respectfully requested. The Examiner is encouraged to contact the undersigned should any additional information be necessary for allowance.

Respectfully submitted,



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